IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PHILIP M. MURPHY, JR., T/A M & S PRODUCTS CO., Plaintiff, vs. VOLTA CORPORATION and TELCONTEL CORP., Defendants.	: : : : : : : : :	 CIVIL ACTION NO. 01-1710

MEMORANDUM-ORDER

GREEN, S.J. **MAY 15th, 2002**

Presently before the Court are Defendants' Motion for Summary Judgment, Plaintiff's Response, and Defendants' Reply. For the following reasons, Defendants' motion will be denied.

I. Factual and Procedural Background

M & S Products Co. ("Plaintiff"), a sole proprietorship owned by Philip M. Murphy, Jr. ("Murphy"), acts as a manufacturer's representative for separate, non-competitive manufacturers, primarily in the electrical, metals and plastics fields. Plaintiff represents several manufacturers who sell to Hub Fabricating Company ("Hub"), which is a manufacturer of specialized telecommunications equipment. As a manufacturer's representative, Plaintiff earns a commission based on its success in selling a product. If there are no sales, Plaintiff receives nothing, and loses any time and money it invested in the development of that opportunity.

In 1990, Hub enlisted Plaintiff in an effort to find a manufacturer to fabricate a particular component. Plaintiff, through Murphy, and relying on its own research and knowledge, approached Volta Corporation ("Volta") regarding the possibility of selling this specially manufactured device to Hub. Prior to this time, Volta and Hub had never done business with each other. Before Volta commenced its relationship with Hub, Plaintiff and Volta entered into an oral agreement regarding the payment of commissions from Volta to Plaintiff to compensate Plaintiff for developing this business opportunity. In addition to the agreement on the commission percentage, Plaintiff also alleges that the parties contracted for Plaintiff to continue to receive commissions as long as Defendants sold products to Hub. Thereafter, Volta and Hub consummated their production agreement, and Volta began paying Plaintiff the agreed-to 5% commission. Some time after 1995, Telcontel Corp. ("Telcontel") assumed control of certain parts to be made for Hub, and also assumed the contract obligations of Volta to Plaintiff.[1]

All of these business relationships continued for several years. In January, 1998, Hub requested a price reduction on the product Defendants originally made for Hub. Then, in March 1998, Defendants, through a letter signed by Eugene Norden, purported to terminate their obligations to Plaintiff and stopped paying the 5% commission on products sold to Hub. At or near that time, Defendants granted a 5% cost reduction to Hub.

Defendant justifies the cessation of payments to Plaintiff by arguing that since there was no definite term in the payment of commissions to Plaintiff, the payments were terminable at will under Pennsylvania law. Plaintiff argues that Volta agreed to pay the commissions for as long as Volta conducted business with Hub.

Plaintiff initiated the instant action in April, 2001, invoking this Court's diversity

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[1] In its Response Brief, Plaintiff provides some background of Telcontel and its relationship to the instant action. Telcontel was formed in 1995 and is controlled by Eugene Norden, the sole owner, sole officer and sole director of Telcontel. Eugene Norden is the son of Alexander R. Norden, the founder of Volta. Telcontel took over control of some aspects of Volta's dealings with Hub; specifically, "Telcontel assumed control of all of the telecommunications parts sold to Hub, while Volta retained the business of selling electrical connectors to Hub. Both Defendants continue to sell to Hub." (See Pltf.'s Resp. ¶¶ 24-25.)

jurisdiction pursuant to 28 U.S.C. § 1332.[2] Plaintiff's Complaint seeks damages against Defendants for breach of contract, and also seeks a declaration of its right to receive commissions from Defendants on an on-going basis. Plaintiff seeks to recover commissions on *all* sales that Defendants have made, or ever will make, to Hub, and argues that this understanding was part of the agreement at issue. Plaintiff supports this demand by pointing out that Defendants had never before dealt with Hub, and that Defendants "had done no business with Hub in the past, did not know who Hub was, and would not have found Hub absent Plaintiff's introduction of" them to Hub. (See Pltf.'s Resp. ¶ 13.)

II. Legal Standard

Defendants move pursuant to Rule 56 of the Federal Rules of Civil Procedure. To be successful, Defendants must prove that, in considering the "pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, . . . there is no genuine issue as to any material fact and that the [Defendants are] entitled to a judgment as a matter of law." See Fed. R. Civ. P. 56(c). If, in response to a properly supported motion for summary judgment, an adverse party merely rests upon the allegations or denials in their pleading, and fails to set forth specific, properly supported facts, summary judgment may be entered against her. See Fed. R. Civ. P. 56(e). Of course, I must draw all reasonable inferences in favor of the party against whom judgment is sought. See American Flint Glass Workers, AFL-CIO v. Beaumont Glass Company, 62 F.3d 574, 578 (3d Cir. 1995). The substantive law controlling the case will

[2] Plaintiff has made the following uncontested allegations to support this Court's diversity jurisdiction: Plaintiff resides in Glenmoore, Pennsylvania; Defendants both reside in Laurence Harbor, New Jersey; and, the amount in controversy is in excess of $75,000.00, exclusive of interest and costs. (See Pltf.'s Cmplt. ¶¶ 1-5.)

determine those facts that are material for the purpose of summary judgment. See Anderson v. Liberty Lobby Inc., 477 U.S. 242, 248 (1986).

"As a basic premise, federal courts sitting in diversity are required to apply the substantive law of the state whose laws govern the action." Robertson v. Allied Signal, Inc., 914 F.2d 360, 378 (3d Cir. 1990). "When ascertaining matters of state law, the decisions of the state's highest court constitute the authoritative source." Connecticut Mutual Life Insurance Co. v. Wyman, 718 F.2d 63, 65 (3d Cir. 1983).

The instant matter is before the Court due to the diversity of the parties, and the Court will apply Pennsylvania law.[3]

III. Discussion

Defendants argue that their obligation to pay Plaintiff is presumed to be terminable at-will, since there is no specific time period stated in the alleged oral employment contract. Defendant further argues that, in order for Plaintiff to rebut the at-will presumption, Plaintiff must show "clear and definite evidence" that the oral contract contained either a fixed duration, an agreement that Plaintiff would be discharged only for cause, or "sufficient additional consideration" in addition to his normal services to support a finding that he could not be

[3] No party specifically argues that Pennsylvania law applies, but Plaintiff and Defendants rely on Pennsylvania law in their brief. (See Dfdts.' Mem. at 5-11; Pltf.'s Resp. at. 11-19.) Generally, in resolving a claim brought under the Court's diversity jurisdiction, the law to be applied is the law of the forum state. See Erie R.R. Co. v. Tompkins, 304 U.S. 64, 78 (1938); see also Gasperini v. Center for Humanities, Inc., 518 U.S. 415, 417 (1996) (holding that, under Erie doctrine, "federal courts sitting in diversity apply state substantive law and federal procedural law"). The agreement at issue was allegedly formed in Pennsylvania, Plaintiff resides in Pennsylvania, and Hub Manufacturing is located in Pennsylvania. Since no party objects to the application of Pennsylvania law, and even though both Defendants reside in New Jersey, I will apply Pennsylvania law to examine the matter sub judice.

discharged without just cause for a reasonable period of time.

However, Plaintiff has pled a different factual basis. The evidence supporting Defendants' position may be rebutted by Murphy's testimony that there was a definite agreement with a definite time period. Here, it is undisputed that the parties agreed to a 5% commission, and that, for a number of years, this commission was paid. The question presented is how long Plaintiff is to receive these commissions. Plaintiff pleads and argues that pursuant to the alleged oral agreement, in consideration for the production of the original business, commissions are to continue as long as there are sales between Defendants and Hub, because this is what the parties agreed to and the manufacturing agreements would never have been created without Plaintiff's efforts. Defendants, in the letter terminating Plaintiff, seem to indicate that Plaintiff was being paid commissions for the production of new work and business for Defendants, and that Plaintiff's performance was unsatisfactory. These are two different and fact-intensive interpretations of the agreement between the parties, and these conflicting interpretations can only be resolved by the fact-finder.

After reviewing the parties' submissions, and, drawing all inferences in favor of Plaintiff as the non-moving party, I conclude that Plaintiff could, on a proper record, show that the contract at issue is valid and enforceable. Therefore, since there are genuine issues of material fact regarding the alleged oral contract, summary judgment is inappropriate at this time. An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PHILIP M. MURPHY, JR., T/A	:	
M & S PRODUCTS CO.,	:	
Plaintiff,	:	CIVIL ACTION
	:	
vs.	:	
	:	NO. 01-1710
VOLTA CORPORATION and	:	
TELCONTEL CORP.,	:	
Defendants.	:	

ORDER

AND NOW, this _________ day of May, 2002, upon consideration of Defendants' Motion for Summary Judgment, Plaintiff's Response, and Defendants' Reply, **IT IS HEREBY ORDERED** that Defendants' motion is **DENIED**.

BY THE COURT,

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CLIFFORD SCOTT GREEN, S.J.